MONTANA LEGISLATIVE HISTORY

Chapter 185 19 81

Bill H 621 S _____ Original bill & history ✓ C

| H. Committee on Judiciary | | | S. Committee on Judiciary | | |
|---|---|---|---|---|---|
| Hearing Date(s) | Feb 10 | ✓ C | Hearing Date(s) | Mar 16 | ✓ C |
| | Feb 11 | ✓ C | | Mar 17 | ✓ C |
| | | C | | | C |
| | | C | | | C |
| Date Out | Feb 11 | ✓ C | | Mar 17 | ✓ C |

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 621

INTRODUCED BY MEYER, M. ANDERSON, FABREGA

IN THE HOUSE

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| February 3, 1981 | Introduced and referred to Committee on Judiciary |
| February 12, 1981 | Committee recommend bill do pass. Report adopted. |
| February 13, 1981 | Bill printed and placed on members' desks. |
| February 14, 1981 | Second reading, do pass. |
| February 16, 1981 | Considered correctly engrossed. |
| February 17, 1981 | Third reading, passed. Ayes, 98; Noes, 1. Transmitted to Senate. |

IN THE SENATE

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| February 18, 1981 | Introduced and referred to Committee on Judiciary. |
| March 17, 1981 | Committee recommend bill be concurred in as amended. Report adopted. |
| March 19, 1981 | Second reading, concurred in. |
| March 21, 1981 | Third reading, concurred in as amended. Ayes, 48; Noes, 0. |

IN THE HOUSE

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| March 23, 1981 | Returned from Senate with amendments. |
| April 8, 1981 | Second reading, amendments concurred in. |

April 9, 1931

Third reading, amendments concurred in. Ayes, 93; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

House BILL NO. 621

INTRODUCED BY Meyer Mike Auburn Ewer

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE AND PROHIBIT COMPUTER-RELATED CRIME; PROVIDING PENALTIES; PERMITTING THE STATUTE OF LIMITATIONS TO TOLL UNTIL THE OFFENSE IS DISCOVERED; AMENDING SECTIONS 45-1-205, 45-2-101, 45-2-103, 45-2-104, 50-20-109, AND 61-5-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.



(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.



INTRODUCED BILL

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(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

~~(8)~~ (14) "Conduct" means an act or series of acts and the accompanying mental state.

~~(9)~~ (15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

~~(10)~~ (16) "Correctional institution" means the state prison, county or city jail, or other institution for the





incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

~~(11)~~ (17) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

~~(12)~~ (18) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to his or its business or occupation.

~~(13)~~ (19) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

~~(14)~~(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

~~(15)~~(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

~~(16)~~(22) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

~~(17)~~(23) A "frisk" is a search by an external patting of a person's clothing.

~~(18)~~(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

~~(19)~~(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.





~~(20)~~(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

~~(21)~~(27) "Human being" means a person who has been born and is alive.

~~(22)~~(28) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

~~(23)~~(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

~~(24)~~(30) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. The foregoing definition does not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

~~(25)~~(31) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

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(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

~~(26)~~(32) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

~~(27)~~(33) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

~~(28)~~(34) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

~~(29)~~(35) "Mentally incapacitated" means that a person





is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

~~(30)~~(36) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

~~(31)~~(37) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

~~(32)~~(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

~~(33)~~ (39) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance, or transfer of title to, interest in, or possession of property.

~~(34)~~ (40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

~~(35)~~ (41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

~~(36)~~ (42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

~~(37)~~ (43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official





detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

~~(38)~~ (44) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

~~(39)~~ (45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

~~(40)~~ (46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

~~(41)~~ (47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

~~(42)~~ (48) "Peace officer" means any person who by virtue

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of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

~~(43)~~(49) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

~~(44)~~(50) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

~~(45)~~(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

~~(46)~~(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

~~(47)~~(53) "Premises" includes any type of structure or building and any real property.

~~(48)~~(54) "Property" means ~~anything~~ any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;





(e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof; and

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine or human readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

~~(49)~~(55) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has no authority to defeat or impair, even though the offender himself may have an interest in the property.

~~(50)~~(56) "Public place" means any place to which the public or any substantial group thereof has access.

~~(51)~~(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

~~(52)~~(58) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

~~(53)~~(59) "Serious bodily injury" means bodily injury





which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

~~(54)~~(60) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

~~(55)~~(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

~~(56)~~(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

~~(57)~~(63) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

~~(58)~~(64) "Statute" means any act of the legislature of this state.

~~(59)~~(65) "Stolen property" means property over which control has been obtained by theft.

~~(60)~~(66) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

~~(61)~~(67) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

~~(62)~~(68) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or





other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

~~(63)~~(69) (a) "Value" means the market value of the property at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be considered the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be considered the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network shall be considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of such economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $150 by the standards set forth in subsection ~~(63)~~ (69)(a) above, its value shall be considered to be an amount less than $150.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

~~(64)~~(70) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

~~(65)~~(71) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.





~~(66)~~(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

NEW SECTION. Section 2. Definition. As used in [section 3], the term "obtain the use of" means to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network, or to cause another to instruct, communicate with, store data in, retrieve date from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network.

NEW SECTION. Section 3. Unlawful use of a computer. (1) A person commits the offense of unlawful use of a computer if he knowingly or purposely:

(a) obtains the use of any computer, computer system, or computer network without consent of the owner;

(b) alters or destroys or causes another to alter or destroy a computer program or computer software without consent of the owner; or

(c) obtains the use of or alters or destroys a computer, computer system, computer network, or any part thereof as part of a deception for the purpose of obtaining money, property, or computer services from the owner of the

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computer, computer system, computer network, or part thereof, or from any other person.

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding $150 in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding $150 in value shall be fined not more than 2 1/2 times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

Section 4. Section 45-1-205, MCA, is amended to read:

"45-1-205. General time limitations. (1) A prosecution for criminal homicide may be commenced at any time.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent,





during the minority or incompetency or within 1 year after the termination thereof;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) may be extended in a prosecution for unlawful use of a computer and prosecution may be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

~~(4)~~(5) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

~~(5)~~(6) A prosecution is commenced either when an indictment is found or an information or complaint is

filed."

Section 5. Section 45-2-103, MCA, is amended to read:

"45-2-103. General requirements of criminal act and mental state. (1) A person is not guilty of an offense, other than an offense which involves absolute liability, unless, with respect to each element described by the statute defining the offense, he acts while having one of the mental states described in subsections ~~(27)~~ (33), ~~(31)~~ (37), and ~~(52)~~ (58) of 45-2-101. The existence of a mental state may be inferred from the acts of the accused and the facts and circumstances connected with the offense.

(2) If the statute defining an offense prescribes a particular mental state with respect to the offense as a whole without distinguishing among the elements thereof, the prescribed mental state applies to each such element.

(3) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning, or application of the statute defining an offense is not an element of the offense unless the statute clearly defines it as such.

(4) A person's reasonable belief that his conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order which is not known to him and has not been published or otherwise made reasonably available to him





and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him;

(b) he acts in reliance upon a statute which later is determined to be invalid;

(c) he acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

(d) he acts in reliance upon an official interpretation of the statute, regulation, or order defining the offense made by a public officer or agency legally authorized to interpret such statute.

(5) If a person's reasonable belief is a defense under subsection (4), nevertheless he may be convicted of an included offense of which he would be guilty if the law were as he believed it to be.

(6) Any defense based upon this section is an affirmative defense."

Section 6. Section 45-2-104, MCA, is amended to read:

"45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections ~~(27)~~ (33), ~~(31)~~ (37), and ~~(52)~~ (58) of 45-2-101 only if the offense is punishable by a fine not exceeding $500 and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described."

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Section 7. Section 50-20-109, MCA, is amended to read:

"50-20-109. Control of practice of abortion. (1) No abortion may be performed within the state of Montana:

(a) except by a licensed physician;

(b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

(c) after viability of the fetus, unless in appropriate medical judgment the abortion is necessary to preserve the life or health of the mother.

(2) An abortion under subsection (1)(c) may only be performed if:

(a) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by him setting forth in detail the facts upon which he relies in making such judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with such judgment. The foregoing certification and concurrence is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(3) The timing and procedure used in performing an abortion under subsection (1)(c) of this section must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101~~(31)~~(37). The fetus may be intentionally





endangered or destroyed only if necessary to preserve the life or health of the mother.

(4) No physician, facility, or other person or agency shall engage in solicitation, advertising, or other form of communication having the purpose of inviting, inducing, or attracting any person to come to such physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

(5) Violation of subsections (1), (2), and (3) of this section is a felony. Violation of subsection (4) of this section is a misdemeanor."

Section 8. Section 61-5-405, MCA, is amended to read:

"61-5-405. Offenses furnishing ground for suspension or revocation of license. (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, 45-2-101~~(15)~~(21), and 61-7-103, respectively.

(2) In addition to convictions mentioned above the division, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303); and

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301)."

Section 9. Codification instruction. Sections 2 and 3 are intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45 apply to sections 2 and 3.

Section 10. Effective date. This act is effective on passage and approval.

-End-

THE MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
February 10, 1981

The meeting of the House Judiciary Committee was called to order by Vice Chairman, Carl Seifert at 8:00 a.m. in Room 437 of the capitol. The members who were excused were Rep. Keyser, Rep. Matsko, and Rep. Teague. Rep. Yardley was absent. Jim Lear, Legislative Counsel was also present.

HOUSE BILL 621 REP. DARRYL MEYER presented the bill which would define and prohibit computer-related crimes. Crimes are on the increase in cases such as using the computer without the consent of the owner or using the computer to steal or embezzle. This bill would address the definition of property so the offense can be covered. Now, as the law stands, one who steals from the computer is taking a service or destroying a service which is not defined in the law with a monetary value. EXHIBIT 1.

JIM HUGHES, sponsoring Mountain Bell, spoke as a proponent. With the growing number of computers, there is a growing number of incidents involving computer theft. One can get the information for stealing from banks quite easily. One problem is that it is possible to obtain the information without taking anything of value from the owner. The thief can use the information or can destroy the programmed material. This bill would allow the statute of limitations to run for about a year. This bill is pattterened after some in other states and defines what computer crime is and has been researched.

JOHN SCULLY, representing Independent Bankers, supported the bill and said the information can be used for many other purposes.

There were no Opponents.

REP. MEYER closed the bill.

During questions from the committee, REP. HANNAH asked why the current law is not working. MR. HUGHES replied that actual property is included in the current law. This bill defines what is the theft of money and data. This provides a definition.

REP. HANNAH then asked how you can set a value on information. The answer was that the programming is valued. MR. SCULLY further stated that value is lost when someone erases something from the computer, this law says it is valuable.

REP. HUENNEKENS questioned that in the penalty section of the bill the value is two and one-half times the value of the property taken. MR. SCULLY said that the monetary penalty is the only way of getting restitution back to the victim.

REP. CURTISS asked about the statute of limitations. REP. HANNAH said it looked as though the bill changed the statute from five

years to forever. MR. SCULLY said if you apply the statute of limitations to this crime, you may never find it out. It only extends to a certain period of time.

REP. BENNETT asked if there are enough instances to justify changing the law. The answer was yes.

The hearing closed on House Bill 621.

HOUSE BILL 626 REP. KEEDY, chief sponsor, stated this bill is to repeal the "Exclusionary Rule" providing a civil remedy for violation of a person's constitutional privacy rights. If this bill is passed section 46-13-302 would be repealed. It provides for the suppression of any evidence obtained in violation of the 4th amendment. It requires evidence be kept from the consideration of the jury if obtained through unlawful search and seizure. This bill is designed to substitute a number of provisions to do a more appropriate job. The exclusionary rule is not of constitutional mandate, it is a court-made rule of law.

It was basically a law by the United States Supreme Court as to what public policy should be. REP. KEEDY believes the legislature should be able to determine this. The rule is not working. The rule does not provide for the innocent victim. A process needs to be devised that will protect the victims by controlling the police activities. Policemen will not take meaningful measures to correct their own people. There are some things the Exclusionary Rule does not do. It does not compensate the victim.

A trial is supposed to be a truth-seeking function. With this rule the truth is distorted. Evidence should be excluded when its reliability is questioned. The exclusionary rule does not make major or minor distinctions. Rather than disciplining the policemen it allows them to lie about their activities. It does not promote due process. It inspires the police to give harassment. We need to prevent the guilty from going free. This will deter police misconduct. The innocent victim needs to be protected from the police when the police are wrong. A bill similar to this was passed last session and vetoed by the governor after adjournment.

TOM HONZEL, representing County Attorney's Office, feels there are problems with the exclusionary rule; therefore, the rule should be replaced. HONZEL stated this bill is good as it takes care of the many problems in the past. HONZEL quoted from Chief Justice Burger's talk to the American Bar Association of changes needed. BURGER's talk suggests repeal of the exclusionary rule. It was a rememdy for violations of constitutional rights under the 4th amendment. The Chief Justice has not been able to get a majority of the court to agree. They indicate the change must be legislative. HONZEL stated the Attorney General's Office supports this bill.

IND. Acc. 1/20/81 621

# YOUR MONEY'S WORTH

## Fraud! 1981 varieties Push-button criminals

By SYLVIA PORTER

(Second of four columns)

A new criminal has emerged for the decade of the 1980s — a sophisticated thief who even at this date is stealing as much as $40 billion a year out of your pocket and mine and whose crimes often go unpunished because they are undetected.

He (she) is the high technology crook, operating in the field of electronics, concentrating on computer frauds. And the irony is that such is the secret, impersonal nature of the computer that even when a computer fraud is discovered, it may be impossible to find who actually pressed the button.

So relatively easy is computer fraud that smaller companies particularly are deeply alarmed about their vulnerability. The cost of retaining trained personnel capable of trapping the technically adept crooks is prohibitive for all except the giants.

For business in general, even larger problems may lie ahead along with the proliferation of home computers and electronic transfer of funds via data banks that are accessible through telephone lines. Billions of dollars will pass through these systems, notes the Insurance Information Institute. And as the transfer systems gain in acceptance, security experts well may find it extremely difficult to keep the computer crook under control.

Not even the federal government is immune. In sensitive agencies, millions of dollars are being invested to safeguard vital information that could be beyond price to foreign agents and would-be terrorists in this age of terror.

A computer crime does not even require an extensive technical knowledge. One office worker discovered he could print multiple copies of his company paycheck simply by pressing the repeat button on the firm's computer. He had inflated his salary by printing 200 duplicates of his paycheck before he was caught.

The precise cost of computer crime to the nation can't even be calculated — and most law enforcement agencies acknowledge that they are not sufficiently equipped to cope with the problem.

All estimates are classified as guesswork because only a comparative handful of crimes — fewer than 15 percent — are believed to have been reported to law enforcement officials.

"It's not currently possible to build an adequate technically-secure computer system," says computer security specialist Donn Parker, author of "Crime by Computer." Parker has files on 700 or more cases, but he adds "even when computer customers get all the security systems, they find it sometimes interferes with the use of the computer, so they don't use the security."

The ingenuity of the computer crook seems limitless. As an example, there is the individual who tapped the computerized accounts of a Washington, D.C. bank without even coming close to a machine.

He merely put his personal deposit slips on the counter for other customers to use. He sat quietly at home while other depositors put a quarter-million dollars of their own money into his account as the bank's computer merrily hummed away reading his account number in the magnetic ink on the botton of the tickets.

Subsequently, the man returned to the bank, withdrew $100,000 and vanished!

This is not an isolated incident.

As far back as 1978, a Los Angeles computer analyst took advantage of his knowledge of secret fund transfer codes, posed as a bank official and made off with more than $10 million from a local bank. He was caught, pleaded guilty, and was sentenced to prison.

Then there was the notorious fraud involving Equity Funding Corp. In that instance, the management harnessed the computer to fake 64,000 ficticious customers of life insurance policies involving billions of dollars.

What makes computers so vulnerable to sophisticated thieves is the very element that lies behind their appeal; minimizing paperwork plus speed and efficiency. Computer criminals also are aided by the absence of witnesses and easy evidence. On top of all this complexity is the continuous introduction of ever more advanced computers.

But even though many crimes are never discovered and many more are not admitted for fear of frightening customers and stockholders, both business and government are stepping up their attacks on the thieves. The FBI has given several hundred of its agents courses ranging up to four weeks on detecting this form of theft...

There is a waiting list for classes in computer crime at the Quantico, Va., headquarters of the FBI academy. Prosecutors also are being schooled. Federal legislation is being considered that would define and punish computer crime.

And meanwhile? Use your common sense. Be skeptical of all safeguards on electronic equipment. The pitfalls are obvious. Avoid them.

**Tomorrow: Medical insurance claims.**

HOUSE JUDICIARY COMMITTEE

BILL 621 Date 2/10/81

SPONSOR MEYER

| NAME | RESIDENCE | REPRESENTING | SUPPORT | OPPC |
|---|---|---|---|---|
| JAMES R. HUGHES | HELENA | MTN. BELL | ✓ | |
| John Scully | | Fed Bankers | | |
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

REP. YARDLEY moved the statement of intent be included with the bill. EXHIBIT 1. The motion passed with REP. DAILY voting no. (REP. ANDERSON was absent during the vote).

REP. CURTISS moved do not pass as amended. A roll call vote resulted. Those voting yes were: REP. SEIFERT, REP. BENNETT, REP. CURTISS, REP. HANNAH, REP. IVERSON, REP. MATSKO, REP. MCLANE, REP. ANDERSON, REP. DAILY, REP. KEEDY, REP. TEAGUE and REP. BROWN. Those voting no were: REP. CONN, REP. EUDAILY, REP. ABRAMS, REP. HUENNEKENS, REP. SHELDEN and REP. YARDLEY. REP. YARDLEY requested a minority report. Those representatives who requested to be on the minority report were: REP. YARDLEY, REP. HUENNEKENS, REP. CONN, REP. ABRAMS and REP. EUDAILY.

HOUSE BILL 590 REP. HUENNEKENS moved do pass. After a brief discussion it was decided to hold the bill until amendments were brought in. REP. HUENNEKENS withdrew his motion.

HOUSE BILL 621 REP. HUENNEKENS moved do pass. He stated there is a problem with computer-related crimes and this bill will help solve it. Computers are being used throughout the state. The motion passed 17 to 1 with REP. MCLANE voting no. (REP. TEAGUE was absent during the vote).

HOUSE BILL 208 REP. KEEDY moved do pass.

REP. KEEDY handed out an amendment to the bill. EXHIBIT 2. REP. KEEDY moved the amendment be adopted.

REP. EUDAILY inquired if the title would have to be changed. JIM LEAR stated no-just an internal reference to the section would be made. The amendment passed unanimously. (REP. ANDERSON was absent during the vote).

REP. KEEDY moved to amend page 1, line 21 following "(c)" inserting "except in 45-5-502,". The motion passed unanimously. (REP. ANDERSON was absent during the vote).

REP. KEEDY moved do pass as amended. The motion carried with REP. YARDLEY, REP. TEAGUE, REP. BENNETT, and REP. EUDAILY voting no. (REP. ANDERSON was absent during the vote).

HOUSE BILL 5 REP. YARDLEY moved do pass. The amendments and minutes of the sentencing subcommittee were given out. EXHIBIT 3. REP. YARDLEY moved the amendments do pass. Testimony indicates 90-95% of all cases have some type of plea bargaining used. There

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 16, 1981

The forty-fourth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 621:

TO DEFINE AND PROHIBIT COMPUTER-RELATED CRIME.

Yielding the chair to Vice Chairman O'Hara for the hearing of this bill, Senator Anderson presented the bill. He read from an article written by Sylvia Porter, appearing in THE INDEPENDENT RECORD (attached Exhibit A), relative to computer crime, and pointed out that many of these crimes were never reported because doing so would jeopardize public trust in institutions such as banks and savings and loan companies. Rather than reporting such crimes, these companies take out insurance to cover the losses, and this forces up the cost of the services they provide.

Jim Hughes, representing Mountain Bell, testified in support of the bill as shown on his attached testimony sheet.

George Bennett, representing the Montana Bankers Association, testified in support of the bill and said that it was patterned after federal legislation.

Rep. Meyer spoke as chief sponsor of the bill, saying that he would close the discussion. He said that the world is becoming a computer world, and that this legislation is needed.

Senator Mazurek asked Marge Johnson, representing Mountain Bell, if "may" on line 10 of page 20 should not be changed to "shall". She said that this change would be all right with her.

Senator O'Hara asked if an accounts receivable record was dumped out of a computer, could it ever be recovered. Marge Johnson replied that a large cost would be involved in retrieving these records, and, in the cases where the records were stored only in the computer, it would not be possible to recover them at all.

Senator Berg questioned the harshness of the penalty as

outlined on page 19 under subsection (2), as being at the rate of up to two and one-half times the value of the theft.

CONSIDERATION OF HOUSE BILL 537:

TO PROVIDE A 5-YEAR STATUTE OF LIMITATIONS FOR ACTIONS BASED ON A STATUTORY DEBT CREATED BY THE PAYMENT OF PUBLIC ASSISTANCE.

Rep. Huennekens, Billings, presented the bill and handed out a summary of it (attached Exhibit B). He said that he felt the present system encourages welfare fraud because of the two-year statute of limitations, so the statute of limitations should be changed to the proposed five years from the date of detection of the fraud.

There were no proponents, opponents, or questions from the committee.

CONSIDERATION OF HOUSE BILL 536:

TO AMEND THE UNIFORM PARENTAGE ACT.

Rep. Huennekens presented the bill as a method of helping a child determine parentage by bringing action when he has reached his age of majority. Rep. Huennekens said that the bill would not provide harrassment against the parent, but would allow a child to try to establish his paternity by taking advantage of new methods of tissue analysis, etc.

Senator Mazurek asked Mike Garrity, of the Department of Revenue, if the department's use of this legislation would be to force the father to pay support if he were financially able to do so. Mr. Garrity agreed that this would be their application. Senator Mazurek feared that this might leave the door open for a "disinterested father" to later dispute an adoption of his child. He suggested that for this reason the statute of limitations in these cases should be extended only to legal actions brought by the child, but no one else.

CONSIDERATION OF HOUSE BILL 535:

TO AMEND UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT TO PROVIDE THAT THE DEPARTMENT OF REVENUE MAY REQUEST THE PROSECUTING ATTORNEY TO REPRESENT THE SUPPORT OBLIGEE.

Rep. Huennekens presented the bill.

Mike Garrity, of the Department of Revenue, speaking in

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date March 16, 1981

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| ~~Anderson, Mike, Chr. (R)~~ | ✓ | | |
| O'Hara, Jesse A. (R) | ✓ | | |
| Olson, S. A. (R) | ✓ | | |
| Brown, Bob (R) | ✓ | | |
| Crippen, Bruce D. (R) | ✓ | | |
| Tveit, Larry J. (R) | ✓ | | |
| Brown, Steve (D) | ✓ | | |
| Berg, Harry K. (D) | ✓ | | |
| Mazurek, Joseph P. (D) | ✓ | | |
| Halligan, Michael (D) | ✓ | | |
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Each day attach to minutes.

NAME: Jim Hughes DATE: 3/16/81

ADDRESS: 2020 WINNE HELENA

PHONE: 449-3395 (OFFICE)

REPRESENTING WHOM? MOUNTAIN BELL

APPEARING ON WHICH PROPOSAL: HB 621

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: WRITTEN TESTIMONY ATTACHED

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

HOUSE BILL 621

TESTIMONY OF JIM HUGHES MOUNTAIN BELL

PROPOSED COMPUTER CRIME BILL

There are four main types of computer crime which include:

(1) Placing fraudulent information into a computer system,

(2) Using the computer without the consent of the owner,

(3) Altering or destroying computer information, files or data, and

(4) Stealing computer related property or services or using computers to steal other types of property, e.g. money, commercial documents, etc.

This proposed bill prohibits all four types of computer crime by first defining the offense of "unlawful use of a computer". As defined this offense includes the first three categories of computer crime and the fourth category to the extent that the use of a computer is involved.

There are a few problems which are peculiar to computer related crime which are dealt with by the bill. For one, it is possible to steal computer information without actually depriving the owner of that information. The proposed bill amends the definition of "value" as used in the Criminal Code to include the situation in which only part of the value of the computer property is taken. It permits a determination of value in those instances which will take into consideration the owner's right to decide who can use his property and how it is to be used.

A second problem which is peculiar to computer related offenses is the fact that they are extremely difficult to detect. Under this bill, a section is added which will extend the time period until the computer related offense is or should have been discovered. This language is similar to existing law with regard to theft by persons

in a position of trust or fiduciary relationship to the victim.

A third problem dealt with by the bill which is peculiar to computer crime is that losses per incident of computer related theft are far greater than those resulting from other forms of theft. This problem has been addressed in the penalty section of the bill. Generally, the penalties for unlawful use of a computer are the same as the penalties for theft. Where the value of the property involved is more than $150, however, a fine is also authorized which is equal to 2 1/2 times the value of that property. This type of penalty is particularly appropriate in light of the tremendous amounts frequently involved in computer offenses and will also hopefully serve as a deterrent.

The bill is modeled after statutes which now exist in a uniform fashion in 10 other states (Arizona, California, Colorado, Florida, Illinois, Michigan, New Mexico, North Carolina, Rhode Island and Utah).

This area of crime is rapidly emerging, deals with very large possible amounts of money, and is new to us in concept and in the types of statutory language needed to deal with the uniqueness of computer crime.

A good example is one that could occur here at the Capitol by someone who might destroy the computer program for the codes contained in the Legislative Council. The cost for reprogramming would be spectacular.

The provision of this bill will not alter those that now exist for other types of crime.

private attorney before he turned to teaching. He added that he has made a specialty of studying the small claims courts and their satisfactory record. He described such courts as the ones which really do the most for the common people, who, in effect, lose their right to a court hearing when these courts are eliminated. He said that the small claims courts were recently eliminated because present law dictates that there be no trial de novo in district court. He said that a simple amendment saying there must be a right to a trial de novo in the district court would remedy the situation. He quoted statistics indicating a definite trend toward increasing use of the small claims courts.

John Maynard agreed with Mr. Alexander's remarks, and said that the people of Montana find this type of court very important.

Senator Halligan suggested that the issue be started at once if that was the desire of the committee, and Senator Anderson said that he would go to the leadership in the Senate with the prepared bill drafting request, and would report back to the committee.

Senator Anderson scheduled an executive meeting for this upcoming Saturday, and for Monday and Tuesday of next week.

DISPOSITION OF HOUSE BILL 396:

Senator Berg moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 535:

Senator Berg moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 537:

Senator Berg moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 621:

Senator Mazurek moved that the bill be amended twice, changing "may" to "shall", as shown on the attached Committee Report, and his motion passed unanimously. He then moved that the bill be CONCURRED IN AS AMENDED, and this motion passed unanimously.

DISPOSITION OF HOUSE BILL 208:

Senator Crippen moved that the bill BE NOT CONCURRED IN, and his motion passed over Senator S. Brown's opposition.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date March 17, 19

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| ~~Anderson, Mike, Chr. (R)~~ | ✓ | | |
| O'Hara, Jesse A. (R) | ✓ | | |
| Olson, S. A. (R) | ✓ | | |
| Brown, Bob (R) | ✓ | | |
| Crippen, Bruce D. (R) | ✓ | | |
| Tveit, Larry J. (R) | ✓ | | |
| Brown, Steve (D) | ✓ | | |
| Berg, Harry K. (D) | ✓ | | |
| Mazurek, Joseph P. (D) | ✓ | | |
| Halligan, Michael (D) | ✓ | | |
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Each day attach to minutes.

# STANDING COMMITTEE REPORT

March 17, 19 81

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 621
MEYER (ANDERSON)

Respectfully report as follows: That HOUSE Bill No. 621,
third reading copy, be amended as follows:

1. Page 20, line 10.
Following: "(2)"
Strike: "may"
Insert: "shall"

2. Page 20, line 12.
Following: "prosecution"
Strike: "may"
Insert: "shall"

And, as so amended,
~~DO PASS~~
BE CONCURRED IN

Mike Anderson
Chairman.

STATE PUB. CO.
Helena, Mont.